UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MOUNTAIRE FARMS, INC.,

Employer,

and Case No. 05-RD-256888

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 27,

Incumbent Exclusive Representative,

and

OSCAR CRUZ SOSA,

Petitioner.

REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION AND MOTION TO DEFER RD ELECTION PENDING DISPOSITION OF REQUEST FOR REVIEW

INTRODUCTION

On February 8, 2019, United Food and Commercial Workers Union, Local 27 ("Union" or "UFCW Local 27") and Mountaire Farms, Inc. ("Employer") executed a collective-bargaining agreement containing a union-security clause.[1] The collective-bargaining agreement's effective date was December 22, 2018. The Union and the Employer agreed that the collective-bargaining agreement would remain in effect until December 21, 2023. The agreement is the latest in a series of contracts dating back to around 1978.

[1] A copy of the collective-bargaining agreement is attached to this document as Appendix A.

On February 22, 2020, Oscar Cruz Sosa ("Petitioner") filed a petition with the National Labor Relations Board ("NLRB" or "Board") under Section 9(c) of the National Labor Relations Act ("Act") seeking to decertify the Union as the exclusive bargaining representative of the employees in the bargaining unit. Following a hearing on March 10, 2020,[2] the Regional Director for Region 5 ("Regional Director" or "RD") issued a Decision and Direction of Election ("DDE")[3] after concluding that the existing collective-bargaining agreement cannot bar the petitioned-for decertification election because it contains an unlawful union-security clause.

Pursuant to Section 102.67 of the Board's Rules and Regulations, the Union requests review of the Regional Director's Decision and Direction of Election.[4]

ARGUMENT

In relevant part, Article 3, Section 1 of the parties' collective-bargaining agreement provides that:

> It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the execution date of this Agreement shall, on or after the thirty-first day following the beginning of such employment,

[2] A copy of the hearing transcript is attached to this document as Appendix B.
[3] A copy of the Decision and Direction of Election is attached to this document as Appendix C.
[4] In the DDE, the Regional Director addressed three issues: (1) whether the petition should be dismissed because Petitioner did not file a Statement of Position prior to the hearing; (2) whether Article 3, Section 1 is a "clearly unlawful" union-security clause, and thus the agreement cannot serve as an election bar; and (3) whether Article 3, Section 2 of the union-security clause unlawfully requires the payment of assessments as a condition of maintaining membership as argued by the Employer. On the first issue, the Regional Director found that Petitioner was not required to file a Statement of Position. DDE 6-7. The Union does not challenge that determination. On the third issue, the Director correctly found that Article 3, Section 2 is "not clearly unlawful on its face and standing alone would not remove the bar status of the Agreement." DDE 9-10. The Director's holding is consistent with the legislative history of the Act and corresponding Board law. See, e.g., *Charles C. Krause*, 97 NLRB 536 (1951). It is only the Regional Director's decision on the second issue that is the subject of the instant Request for Review.

> even if those days are not consecutive, shall become and remain members in good standing in the Union.

App. A, Article 3, Section 1. Section 8(a)(3) provides that a union-security clause may "require as a condition of employment [union] membership . . . on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later[.]" 29 U.S.C. § 158(a)(3). A collective-bargaining agreement containing a union-security clause will bar an election as long as the union-security clause is susceptible to a lawful interpretation. See *Paragon Products Corp.*, 134 NLRB 662, 666 (1961).

The union-security clause in this case makes it a condition of employment for "all employees of the Employer covered by this Agreement" to become or remain union members on or after the thirty-first day following the beginning of "such employment." The question presented is whether this 30-day grace period runs from the execution date of the contract or, as the Regional Director determined, either from the effective date of the agreement or the beginning of an employee's employment with the Employer.

Section 8(a)(3) precludes the application of a union security clause to nonmembers until at least 30 days have passed since the collective bargaining agreement containing the clause was entered. Here, the union-security clause provides, "those who are not members on the execution date of this Agreement . . . shall become and remain members in good standing in the Union" on or after the thirty-first day following the beginning of employment covered by the Agreement. As a result, the union-security clause is lawful, as it does not "withhold from incumbent nonunion members and/or new employees the statutory 30-day grace period." *Four Seasons Solar Products Corp.*, 332 NLRB 67, 68 (2000).

The Regional Director found the union-security clause unlawful because, on his reading, the clause did not provide the required 30-day grace period to nonmember incumbents. DDE 7.

The Regional Director explained that the clause necessarily deprived "any employee who was hired prior to the agreement's execution date—February 8, 2019" of "the statutorily mandated 30-day grace period." DDE 7. The Regional Director reasoned that the phrase "such employment" in the clause referred to "the beginning of an employee's employment with the Employer." Id. at 7-8. The Regional Director concluded that "a complete reading of the agreement requires finding that the phrase 'covered by this agreement' is meant to define which of the Employer's employees (i.e. the Unit) who [sic] would be subject to the agreement, not that employment with the Employer can only be viewed from the agreement's execution date forward." DDE 8.

The Regional Director's interpretation of the union-security clause clearly thwarts the parties' intent. What is more, by struggling to give the clause an unlawful interpretation, the Regional Director's decision violates the principle that only a union-security clause that is "clearly unlawful on its face" will fail to bar an election. *Paragon Products Corp.*, 134 NLRB 662, 666 (1961). Unless a union-security clause is "incapable of a lawful interpretation" and "clearly and unequivocally goes beyond the limited form of union-security permitted by Section 8(a)(3) of the Act," it must be presumed lawful, even if it is ambiguous. Id. at 666-67.

By making "the execution date" the pivotal moment in defining when the union-security obligation attaches as a condition of employment for incumbents, the union-security clause clearly contemplates that the obligation will operate prospectively and apply to "such employment" as is "covered by this Agreement," not to earlier points in incumbents' employment history. The Union submits that "such employment" can only refer to employment "covered by" the executed 2018-2023 contract, because the language in the union-security clause providing that employees "who are not members on the execution date . . . shall become and remain members" would otherwise be meaningless. The Regional Director's interpretation requires inferring that the parties only

intended to give employees who were hired on or after February 8, 2019 an opportunity to satisfy their obligation to the union and that they intended that all other incumbent employees who were nonmembers on the execution date could be immediately discharged. The Union's interpretation, by contrast, does not require this absurd result and is instead consistent with the logical inference that the parties intended for the union-security requirements to apply prospectively, which means that the grace period began after contract execution.[5]

The Union respectfully requests that the Board grant review and find that the union-security clause is lawful and that the collective-bargaining agreement bars the instant petition.

CONCLUSION

For the foregoing reasons, and pursuant to Section 102.67 of the Board's Rules and Regulations, the Union seeks review of the Regional Director's finding that the union-security clause in the collective-bargaining agreement is unlawful and his decision to direct a decertification election among bargaining-unit employees who are covered by the collective-bargaining agreement between the Union and the Employer. The Regional Director has directed an onsite manual election for June 17, 2020. The Union requests, pursuant to Sec. 102.67(j)(1) of the Board's Rules and Regulations, that the Board enter an order to postpone the election. If the election proceeds, the Union moves that the ballots be impounded pending the final disposition of the Petitioner's Request for Review.

[5] In addition, the Regional Director erred by considering evidence regarding the parties' usage of the term "employment" elsewhere in the contract, because the union-security clause defines the scope of a new condition of employment. And, even assuming the phrase "such employment" is ambiguous, the Regional Director should nevertheless have concluded that the union-security clause is lawful. See *Paragon Products*, 134 NLRB at 667.

Dated: April 21, 2020

Respectfully submitted,

/s/ Joel A. Smith

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 21, 2020, a copy of the foregoing Request for Review was sent by first class mail and/or email to:

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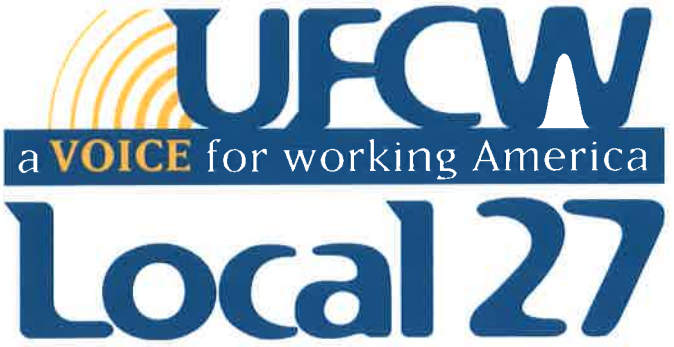
Appendix A



COLLECTIVE BARGAINING AGREEMENT

between

MOUNTAIRE FARMS OF DELMARVA
Selbyville, Delaware

and

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 27, AFL-CIO

EFFECTIVE: **DECEMBER 22, 2018**

EXPIRES: **DECEMBER 21, 2023**

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THIS AGREEMENT effective the **22nd day of December 2018** by and between MOUNTAIRE FARMS OF DELMARVA, INC., Selbyville, Delaware Poultry Plant located at Hoosier Street and Railroad Avenue, herein referred to as the "EMPLOYER," and UNITED FOOD AND COMMERCIAL WORKERS UNION, Local 27, Baltimore, Maryland herein referred to as the "UNION" for and on behalf of the employees now employed or who may hereafter be employed by said Employer.

That, in consideration of the mutual covenants hereinafter set forth the parties hereto agree as follows:

ARTICLE 1 - PURPOSE

The purpose of this Agreement is to promote and insure harmonious relations and cooperation and understanding between the Employer and the employees, to encourage economy and efficiency of operation and maintenance of high standards or product quality and to provide a mutual understanding as to wages and hours and working conditions affecting the employees covered by this Agreement.

ARTICLE 2 - RECOGNITION

The Employer recognizes the Union as the sole bargaining agency in the matter of wages, hours of work and other conditions of employment, in the bargaining unit consisting of all regular employees now employed or who may be employed by the Employer at their Selbyville, Delaware Poultry Processing Plant located at Hoosier and Railroad Avenue on the Delmarva Peninsula, as follows:

All production employees including but not limited to the following: live hangers, pinners, eviscerating, grading, cut-up, sawing, deboning, and other further processing employees, but excluding all employees currently covered under contract between Mountaire Farms of Delmarva and Local 355 of the Teamsters Union.

A new employee will become a regular employee after ninety (90) calendar days after the date of hire.

ARTICLE 3 - UNION SECURITY AND CHECK-OFF

1. It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the execution date of this Agreement shall, on or after the thirty-first day following the beginning of such employment, even if those days are not consecutive, shall become and remain members in good standing in the Union.

2. The Employer shall deduct periodic dues and initiation fees uniformly required as a condition of membership in the Union, and regularly authorized assessments on a weekly basis from the wages of each employee covered by this Agreement who has filed with the Employer a written assignment authorizing such deductions, which assignment shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner. Such dues, initiation fees and assessments shall be forwarded to the Union within fifteen (15) days. The Union will send the Employer a letter by certified mail notifying the Employer of any change in the amount of dues; initiation fees and assessments shall be kept separate and apart from the general funds of the Employer and shall be deemed trust funds.

3. The Union shall indemnify and hold the Employer harmless from any and all claims, demands, suits or other forms of liability which shall arise out of or by reason of action taken or not taken by the Employer in compliance with the provisions of Sections 1 and 2 of this Article.

ARTICLE 4 - MANAGEMENT'S RIGHTS

The Employer has the exclusive right to manage its plant and employees and to direct its affairs and working forces, subject only to such clear and convincing prohibitions governing the exercise of these rights as are expressly and specifically provided in this Agreement.

ARTICLE 5 - WAGES

1. General wage rates, wage increases and classifications are set forth in Schedule "A" attached to this Agreement.

2. Whenever any employee covered by this Agreement is receiving a higher rate than the minimum rate provided for at the time of the signing of this Agreement, such differential shall continue for the term of this Agreement.

3. The Employer will pay a premium of twenty (20¢) cents per hour for work performed on an afternoon shift, which is defined as a shift beginning after 12:00 Noon and before 7:00 p.m. The Employer will pay a premium of ten (10¢) cents per hour for work performed on a night shift, which is defined as any shift that begins after 7:00 p.m.

ARTICLE 6 -HOURS OF WORK

1. The regular workweek for all employees covered by this Agreement shall consist of forty (40) hours. This shall not be construed as a guarantee of forty (40) hours per week in any given week.

2. For all hours worked in excess of forty (40) hours in any one week, the employee shall be paid at one and one-half (1-1/2) times their regular rate of pay.

3. In the event that the employer processes poultry on Saturday and/or Sunday, all employees who are called into work shall be paid at the rate of time and one-half (1 - ½) for all hours worked subject to the provisions set forth below.

   (a) Night shift work beginning at or after 9:00 p.m. on Sunday night shall be considered part of the regular work week and shall be paid for at straight time rates.

   (b) Overtime will be paid on Saturday if the employees who worked for purposes of processing poultry were available to work during the regularly scheduled work week unless they present the Employer with a doctor's note stating the reasons for their absence due to illness.

   (c) The Employer may process poultry on two (2) separate Saturdays in each year of the Agreement and pay the employees their regular straight time hourly rate provided, however, that the employees have not worked in excess of forty (40) hours during that week. This subsection (c) shall be applicable when the Employer is unable to process poultry during a regularly scheduled work day for reasons of maintenance, snow days, acts of God, machine breakdown, etc.

   (d) In the event the employer processes poultry on a Saturday, the employer will endeavor to provide forty-eight (48) hours advance notification to the employees.

4. Employees who report for work at their scheduled starting time shall be guaranteed a minimum of four (4) hours for that day or pay in lieu thereof, except that where work is unavailable because of circumstances beyond the Employer's control, e.g. storm, flood, fire, incoming power failure, the guarantee shall be only two (2) hours pay in lieu of work.

5. All employees shall receive not less than one-half (½) hour and not more than one (1) hour each day for lunch period. Said lunch period shall be as near noon as possible and not earlier than three (3) hours after the employee's starting time.

6. It is understood and agreed that the Employer shall have the right during the life of this Agreement to schedule a paid ten (10) minute break in the morning on a rotating basis commencing no sooner than one and three-quarter hours after the start of the regularly scheduled shift which is to be completed no later than three and one-quarter hours after the start of the regularly scheduled shift. In the event the Employer is required to process poultry more than eight and one-quarter hours in a day, then the employees will be entitled to a second paid ten (10) minute break on a rotating basis which will commence one and one-quarter hours after employees return from lunch to be completed no later than two and three-quarter hours after the employees return from lunch. If the Employer processes poultry

beyond eight and one-quarter hours and the employees have not received an afternoon break, then the employees shall receive pay for the missed break.

7. Employees shall be paid at their regular hourly rate of pay for breakdown time and waiting time spent during the regular work day.

8. Where an employee receives pay for time not actually worked, such time shall not be counted as hours actually worked for the purpose of computing weekly overtime.

ARTICLE 7 - VACATIONS

1. Vacations with pay shall be granted to all regular employees in the Employer's employ, as follows:

   a. One (1) to three (3) years service - one (1) week vacation.

   b. Four (4) years to nine (9) years service - two (2) weeks vacation.

   c. Ten (10) years to nineteen (19) years service - three (3) weeks vacation.

   d. Twenty (20) years to twenty-four (24) years service - four (4) weeks vacation.

   e. Twenty-five (25) years service or more - five (5) weeks vacation.

2. **Vacation Pay will be based on the employee's regular hourly rate times the number of vacation hours approved.**

3. Whenever possible, the Employer will arrange the vacation of each employee at a time which suits the employee's request. Employees having the greatest seniority will be given first choice in selecting their vacation periods.

   A vacation schedule outlining all employees' vacation requests will be compiled by the Employer, and posted by March 1 of each year. Such schedule shall be observed by the Employer and the employees unless unexpected production requirements occur, in which case all parties concerned shall mutually agree to change their schedule.

4. **The Company will continue its current practice of allowing vacation pay to be taken in one-half (1/2) day or one (1) day increments**, at a time mutually agreeable to the employers and the employee. Requests for vacation leave shall not be arbitrarily withheld.

5. **Vacation is an anniversary year benefit and may not be carried over into the next anniversary year of employment.**

ARTICLE 8 - HOLIDAYS

1. The parties recognize the following as paid holidays for no work performed:

New Year's Day	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	**Floating Holiday (1)**
Labor Day	**Floating Holiday (2)***

Employees who have completed 90 days of service as of January 1 of each year will receive two (2) Floating Holidays. New employees hired on or after January 1 of the calendar year, who complete 90 days of continuous service on or before June 30 of the calendar year will be eligible for two (2) Floating Holidays to be taken on or before December 31 of the calendar year. New employees who complete 90 days of continuous service on or after July 1 of the calendar year will be eligible for one (1) Floating Holiday to be taken on or before December 31 of the calendar year. Floating holidays are a calendar year benefit and cannot be carried forward into the next calendar year. Unused Floating Holidays will be forfeited. Employees may not sell or receive pay in lieu of taking a Floating Holiday.

The Employer agrees to make its best efforts to grant Floating Holidays when requested. It is understood, and agreed that the Employer retains the right to change approved Floating Holidays due to the needs of the business up to one week before the employee is scheduled off. In the event the requested Floating Holiday time is denied, the employer and the employee shall attempt to select another mutually accepted date(s).

2. Any employee who has been employed for at least ninety (90) calendar days prior to any one of the above specified holidays (excluding **Floating Holiday** (2)) shall be paid eight (8) hours pay at their straight time hourly wage rate for such holiday for no work performed, provided that the employee works the scheduled hours as ordered by the Employer on the last work day before, the first day following the holiday, and the holiday itself if scheduled. Also, to be eligible for holiday pay for **Floating Holiday** (2), the employee must work the scheduled day before and after the holiday.

3. Sundays and holidays shall be the period between 12:01 a.m. and 12:00 midnight.

4. Any employee may be required to work on any of the holidays specified, except Christmas and Thanksgiving and one other paid holiday selected by the Employer, in which event they shall receive as their total holiday pay time and one-half for all hours worked plus eight (8) hours holiday pay.

5. When a holiday falls on a Sunday, the day designated by the Federal Government shall be considered the holiday for purposes of this Agreement.

6. Hours actually worked on a holiday shall be added to the hours worked that week for the

purpose of computing overtime.

ARTICLE 9 - SENIORITY

1. The Union shall designate one Chief Steward if necessary, and there shall be one or more stewards in each department, whose job it shall be to assist in the adjustment of grievances. Their duties as steward shall in no way conflict with their duties for the Employer.

2. The stewards shall be given permission by their superintendent to leave their jobs when necessary for the specific purpose of handling grievances, provided production is not affected thereby.

3. In all cases of layoff or rehiring, seniority will be the determining factor, with consideration being given to the employee's qualifications.

4. It is understood that seniority shall be plant-wide.

5. The Employer will supply the Union and the Shop Steward, upon request, with a seniority list and a list of all additions to or deletions from the seniority list.

6. New employees shall obtain seniority after ninety (90) days of continuous service. In case of layoffs, the Employer shall lay off such new employees before putting into effect the seniority policy as stated above. New employees, after having fulfilled ninety (90) days continuous service, shall date their seniority from the date they were first employed. The Employer may layoff or discharge any new employee during their trial period and such layoffs or discharge shall not be subject to arbitration.

7. When it becomes necessary to lay off employees, the Employer will notify the Shop Steward and the Union of the names of the employees to be laid off. The Shop Steward shall use this information only for the purpose of checking the seniority list and for consulting with management when there appears to be reason to disagree with the selection of employees to be laid off. In case of discharge, the Employer will notify the Shop Steward immediately.

8. An employee shall be continued on the seniority list of the Employer for a period of twelve (12) months from the date of his layoff.

9. All Shop Stewards shall have top ranking seniority for purposes of lay-off and recall only (during the term of their office) irrespective of their actual length of service, provided they are able to do the work required.

10. Any employee selected or appointed as an official of the Union or delegate to any labor activity, necessitating a leave of absence, shall be granted a leave of absence without pay and be re-employed at the end of such period, with the same seniority as though they had been continuously employed. The maximum duration of any leave approved under this section

shall be one year.

11. Employees transferred to positions not included with the bargaining units represented by the Union or Teamsters Local 355, including employees who were formerly within Local 27's bargaining unit but are, as of the effective date of this Agreement, in positions outside the bargaining unit, shall continue to accumulate seniority and may return to their former or comparable positions for six (6) months. During said six (6) month period, employees may return to their former or comparable positions or to lower positions based on their seniority provided they have the present skill and ability to do the work. After six (6) months, seniority will be frozen and the person may thereafter return to a bargaining unit position at their frozen seniority.

12. The Employer agrees to grant each Shop Steward **three (3) days** of unpaid leave each calendar year for Steward training and education, but not more than twenty (20) Shop Stewards, ten (10) per shift, at any one time. The Union must notify the Employer in writing at least two (2) weeks in advance of the needed time off.

13. The Union shall notify the Employer in writing who the Local 27 representatives are by name and position with the Union. They may enter the plant subject to the following locations and number of representatives. Changes in Union Representatives shall require a three (3) days written notice to the Employer. The Employer shall permit Union representatives who are employed by the UFCW International Union to visit the plant provided the company receives three (3) days advance written notice from Local 27. Such visits shall not interfere with the Employer's operation. Union officials shall not go into any areas of the plant, except the cafeteria and locker room area without the approval of management.

    The Employer reserves the right to accompany Union officials into all areas of the plant, except the cafeteria and locker room. Except for the purposes of an Employer/Union meeting, the Union shall limit the number of Union representatives on the Employer's property to no more than three (3) at any one time, unless management gives permission to the Union to increase this number, with proper notification from the Union.

    The Employer agrees that a mutually agreed upon Union representative employed by UFCW Local 27 will be given up to **one-half hour** with each newly hired bargaining unit employee orientation group. It will be the responsibility of the Union representative to contact the Human Resources Manager for the Employer's orientation schedule.

    If the Union representative requires time with an employee or employees, such time shall take place during the employee's non-working time in a designated area to be agreed upon by the parties.

14. Employees covered by this agreement shall not be displaced by the assignment of any workers retained on a temporary or interim basis. The implementation of this language shall not compel the Employer to schedule or pay overtime.

ARTICLE 10 - JOB POSTING AND BIDDING

1. When a permanent vacancy occurs in any rated job covered by this Agreement, or a new job covered by the Agreement is created, the Employer may, with reasonable effort, fill the vacancy on the new job temporarily for no more than ninety (90) days.

2. At the time of filling the job temporarily, the Employer shall post a notice of the vacancy in appropriate places throughout the plant for a period of three (3) working days. Any employee in a lower rated classification who has completed the probationary period, desiring the vacant job shall apply in writing (by signing personally the posted notice) within three (3) working days after the notice is posted. The Employer will try to fill such vacancies on a permanent basis from its current work force in accordance with the provisions set forth below.

3. **In all transfers or promotions, the following factors shall be considered:**

   a. Skill and ability to perform the available work.

   b. Where skill and ability to perform the work are relatively equal between the employees, length of continuous service shall govern.

4. Any employee promoted to a higher rated job shall be given a fair trial for a period not to exceed thirty (30) days at the increased rate of compensation paid to the regular employees on the job in question, but, if it shall, at the end of such trial period, be decided by the Employer that such employee is not qualified or adapted to the new position or if the employee desires, they shall be returned to their old position at the same rate of pay which was formerly paid for their old position. The Shop Steward and the Union office shall receive notice in writing on all such promotions or demotions, within twenty-four (24) hours after such action takes place.

5. The Employer agrees to grant employees the opportunity to request a department change, lateral job change, or downgrade prior to filling a vacancy from outside the present workforce in accordance with the Company's Job Transfer Procedure (subject to Article 15.6) including its reference to seniority.

6. This section shall apply on a plant-wide basis.

ARTICLE 11 – DISCHARGE

1. In all cases involving the discharge of any employee, the Employer must immediately notify the discharged employee in writing of their discharge and the reason therefore.

2. Any employee discharged must be paid in full for all wages owed them by the Employer at the next regularly scheduled payday.

3. In the event the Union desires to protest the justification of such discharge, such protest shall be filed in writing with the Employer within five (5) working days from the date of receipt of the notice of discharge.

4. No regular employee who has completed their trial period shall be discharged except for just cause as defined in the Employer's policy. If the Employer and the Union cannot agree that the discharge was for just cause, the same may be submitted to the Arbitrator as herein provided. If the Arbitrator finds that the employee was discharged without just cause**, the Arbitrator** may order the reinstatement of the employee and may require payment of back pay, **back benefits, and other forms of make whole relief** in such amounts as in the **Arbitrator's** judgment the circumstances warrant.

5. This article shall not apply to an employee during his trial period.

ARTICLE 12 - GRIEVANCE PROCEDURE

1. **Definition of grievance: A grievance is defined to be any dispute between the Company and the Union or an employee as to any matter involving the interpretation, application, or alleged violation of any provision(s) of this Agreement that has not been resolved by an employee and his/her supervisor.**

2. **Time limits: No grievance shall be considered for any purpose unless it is presented within five (5) workdays after the occurrence of the event out of which the grievance arises to the employee's supervisor in accordance with the provisions of this Article. All time limits set forth herein shall be workdays. If the Company fails to submit a timely response at any Step of the grievance procedure, the Union may immediately appeal to the next Step.**

3. **Grievance Forms: All grievances must be in writing and signed by the aggrieved employee(s). Grievances shall be submitted on a completed grievance form to be established by mutual agreement of the Company and the Union.**

4. **Expedited Arbitration: All grievances concerning the discharge of an employee for just cause as referenced in Article 11 of this Agreement shall be subject to expedited arbitration in accordance with the rules of the American Arbitration Association. Such grievances shall immediately proceed at Step 3 of this grievance procedure as set forth below. Grievances concerning the suspension of an employee shall immediately proceed to Step 2 of the grievance procedure as set forth below.**

5. **Grievance procedure.**

<u>STEP 1.</u> Any employee, or the Union on his/her behalf, who feels aggrieved shall report such grievance in writing to his/her supervisor using the grievance form agreed to by the Company and the Union and within the time limits set forth above. The

supervisor and/or company human resources representative and the employee and/or shop steward and/or union representative shall then meet within three (3) workdays in an effort to satisfactorily adjust the grievance.

STEP 2. If the Union is dissatisfied with the Step 1 decision, it may appeal the decision to the Complex Human Resources Manager or his/her designee within seven (7) workdays of its receipt of the Step 1 decision. The appeal shall set forth the specific reasons for the Union's appeal from the Company Step 1 decision. The employee, along with the shop steward and/or union representative shall then attempt to settle the grievance with the Complex Human Resources Manager or his/her designated representative. Management shall reply in writing within seven (7) workdays of the Union's appeal to Step 2.

STEP 3. In the event the grievance is not satisfactorily settled at Step 2, the Union representative and Director of Personnel or his/her designee shall meet and resolve the grievance, if possible. If the grievance is not adjusted in a manner satisfactory to both parties, it may then be submitted to arbitration upon written request of either party to the other, provided such request is made within ten (10) workdays of failure of settlement in Step 3.

6. Arbitration Procedure.

a. The party requesting arbitration shall notify the other party in writing by submitting a demand for the initiation of arbitration as provided in the Labor Arbitration Rules of the American Arbitration Association. All arbitrations shall be conducted by a single arbitrator selected in accordance with the Labor Arbitration Rules of the American Arbitration Association; provided that the arbitrators offered for selection shall be members of the National Academy of Arbitrators.

b. The decision rendered by the arbitrator shall be final and binding upon the Company, the Union and the employee. The Company and the Union shall each pay their own attorney's fees and expenses in said arbitration. Compensation for the impartial arbitrator for services and costs associated with processing a grievance through the American Arbitration Association shall be equally shared by the parties. Expenses for the hearing room shall be shared equally by the Company and the Union.

c. In cases involving the discharge of an employee, in the event that the arbitrator determines that the employee should be reinstated to employment, with back pay and/or other make whole relief, the Arbitrator shall retain jurisdiction to determine the amount of back pay and benefits after the deduction of earnings the employee received from other employment during the period he/she did not work for the company due to the discharge. At the Company's request, the aggrieved employee shall submit evidence to the company that he/she took reasonable steps to find alternative employment or self-employment. At the Company's request, the aggrieved employee shall submit evidence of all earnings from the alternative employment or self-employment, during the period

of the discharge and shall produce all written documentation of such earning such as pay stubs, W-2 earnings statements (if applicable), and any other document showing the amount of his/her earnings. If the parties cannot agree on the amount of back pay and benefits, a hearing shall be conducted by the arbitrator who conducted the arbitration on the merits. The Arbitrator shall deduct amounts he/she finds the employee earned from alternative employment, including self-employment, from the amount of back pay awarded. If the Arbitrator finds that the employee failed to take reasonable steps to find alternative employment, including self-employment, the Arbitrator shall deduct the amount from the back pay award as he/she finds the employee should have earned had he/she taken reasonable steps to obtain alternative employment, including self-employment. The foregoing shall not prevent the arbitrator from awarding reinstatement without back pay if he/she deems appropriate.

7. **Arbitrator's Authority: The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement or any agreement made supplementary hereto, nor to establish or change any wage rates.**

8. **Waiver of Grievance: Unless a grievance is presented and adjusted in the manner set forth and within the time limit specified in this Article, unless the time limits are extended by mutual agreement, the grievance shall be conclusively presumed to have been abandoned.**

9. **At any step in this grievance procedure, the Union shall have the final authority in respect to any aggrieved employee covered by this Agreement to decline to process a grievance, complaint, difficulty or dispute; further, if it is the judgment of the Union that such grievance or dispute lacks justification under the terms of this Agreement, or has been adjusted or justified under the terms of this Agreement to the satisfaction of the Union Executive Board, such judgment shall be binding upon the employees.**

ARTICLE 13 - NO STRIKE PROVISION

1. Strikes, stoppages, slowdowns, or any form of interference with work are prohibited during the term of this Agreement by the Union and its members. Furthermore, the Employer shall not lockout its employees during the term of this Agreement.

2. Violation of this Article by any employee shall be considered just cause for their discharge.

ARTICLE 14 - HEALTH & WELFARE FUND

1. The Company shall offer bargaining unit employees the same medical insurance plans, at the same cost, as it offers to non-bargaining unit hourly processing plant production employees in Millsboro.

2. The Company shall also offer the same dental, vision, short term disability and basic life

insurance plans, at the same cost, as it offers to non-bargaining unit hourly processing plant production employees in Millsboro.

3. The Company shall have sole discretion during the term of this agreement to amend or terminate any or all provisions of the medical insurance plans (including but not limited to benefits, contributions, co-pays and deductibles), or other insurance plans, subject to 14.1.

4. The Company will provide notice to the Union of pending changes at least 30 days prior to the changes becoming effective and will provide the Union an opportunity to discuss such changes but without any requirement for bargaining between the parties.

5. The authority of an arbitrator with respect to Article 14 shall be limited to enforcing section 14.1.

ARTICLE 15 - GENERAL CONDITIONS

1. Unpaid leaves of absence for good and sufficient reasons are subject to management's approval. While on leave of absence, participation in benefit plans shall be subject to the applicable plan. Leaves for personal reasons (i.e., other than disability, FMLA or military) shall not exceed 90 days. Employees on a leave of absence greater than 90 days shall not accrue seniority or length of service, unless required by law.

2. No employee shall receive a reduction of wages by reason of making this Agreement.

3. The Employer shall provide, without cost to the employee, when they are necessary, work garments, gloves, and tools needed to do their job properly.

4. The Union agrees that high standards of sanitation and employees' health should be maintained in accordance with federal and state regulations. The Union agrees to recognize and respect such Employer policies and procedures existing now or later created in this regard, including smoking in the plant, eating in the plant, required medical examinations before employment, after illness and annually and clean working apparel and personal cleanliness.

5. The Employer agrees to provide for the employees, toilet facilities, wash stands with hot and cold water, proper heat or ventilation as the season of the year demands, locker or cloak rooms, and suitably equipped first aid kits.

6. The Employer may continue and from time to time may change such rules and regulations as it may deem necessary and proper for the conduct of its business, provided the same shall not be inconsistent with any of the provisions of this Agreement. All such rules and regulations shall be observed by the employees.

7. The Employer shall provide a suitable bulletin board to be used exclusively by the Union for the posting of notices, bulletins and other important Union matters.

8. The Employer agrees that employees should be treated justly and fairly by supervisors.

9. It is understood that an employee may not refuse to work overtime when requested to do so. The Employer shall cooperate with an employee who is faced with a legitimate emergency and shall excuse them from working overtime if another employee may reasonably be obtained as a replacement.

10. This Agreement cannot be modified except by mutual consent of both parties, in which case such changes shall be posted as notification to all concerned.

11. The Employer agrees to make payroll deductions for any employee who is eligible to participate in the Union's credit union program, provided the employee executes a valid authorization form to that effect. The Employer will not be required to check off payments to both the Union's credit union and the Christmas Club.

12. The Employer will provide to the Union, on a regular basis, notice of employee discharge, terminations, leaves of absence and permanent transfers between this bargaining unit and the unit represented by Teamster Local 355.

13. The Employer affirms its intention of complying with the provisions of the Occupational Safety and Health Act, and the Union agrees that it will support management in its efforts at compliance and general improvement of safety conditions and will participate in regularly scheduled safety committee meetings.

14. The Employer agrees to comply with the provisions of the Family and Medical Leave Act in accordance with its policies and procedures on that subject.

15. The Employer shall promptly notify a Union Steward if the Employer is contacted by the Immigration and Customs Enforcement (ICE) for the purpose of a search and/or arrest warrant, administrative warrant, subpoena or other request for documents is presented for employees covered by the collective bargaining agreement, in order that the Union can take steps to protect the rights of its members. Except as required by applicable law, the Employer will not require employees to re-verify their employment status if the employee is (1) returning from a leave of absence, (2) being recalled from lay-off, (3) having their employment reinstated or returning to work from any labor dispute.

16. Except as required by applicable law and approved by the ICE or its successor agency and the Social Security Administration (SSA) or its successor, the Employer shall modify records regarding change of name and Social Security Number of employees and such employee shall retain their seniority and all other benefits.

17. It is agreed that the collective bargaining agreement may be printed both in English and any other language needed. Where there is a discrepancy in translation regarding contract language or interpretations, the English language contract shall prevail.

18. No posting or leaflet shall contain any material that adversely reflects upon the Employer, supervisor, employee or customer.

19. This Agreement provides minimum standards only and shall not prevent the Employer from granting additional payments or benefits so long as such payments or benefits are fairly and equally distributed and are not in violation of this Agreement, and/or any State or Federal Law.

20. **The Company reserves the right to randomly drug test Bargaining Unit employees in accordance with the Company's substance abuse program.**

21 **The Company will comply with the provisions of the Fair Labor Standards Act. In doing so, the employees agree they are accountable for recording their work hours in the Company's electronic time system. This includes punching in at the start of their shift and punching out at the end of their shift. Employees who fail to account for their work time by punching as required may be subject to corrective action through progressive discipline.**

ARTICLE 16 - NO-DISCRIMINATION

1. There shall be no discrimination on the basis of race, creed, color, national origin, gender, sexual orientation or age, and **union status** with respect to hiring new employees and in job placement.

2. The Employer agrees that it will refrain from failing or refusing to hire, or discharging any individual, or otherwise discriminating against any individual, with respect to their compensation, terms, conditions, or privileges of employment, because of such individual's race, creed, color, national origin, gender, sexual orientation, age, or **union status**.

3. The Employer further agrees that it will refrain from limiting, segregating, or classifying its employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, creed, color, national origin, gender, sexual orientation, age, or **union status**.

ARTICLE 17 - PROFIT SHARING PLAN

A Profit-sharing Plan, covering the employees represented by the Union and by Teamsters Local 355 will be continued and modified effective April 1, 1997 in accordance with the provisions of the Mountaire Farms of Delmarva profit sharing plan and trust in accordance with the understandings set forth in a side letter to this Agreement.

ARTICLE 18 - ACCIDENT PAY

An employee injured while at work in the plant shall be provided with transportation to a

physician selected by the Employer and thereafter to the hospital, if required. In the event the physician directs that the employee not return to work, the employee shall be compensated up to eight (8) hours lost at their straight time hourly rate. In the event the physician finds that the employee is able to return to work and the employee does so, the employee shall be paid for such time spent for examination purposes.

ARTICLE 19 - FUNERAL LEAVE PAY

Up to three (3) days off at straight time pay for time lost up to eight (8) hours per day shall be given, for employees for attending the funeral of a spouse, son, daughter, mother, father, brother, sister, grandchildren or grandparents. The three (3) days for which the employee is eligible to receive pay are between the day of the death and the day after the funeral, provided that such days off fall on a regular work day on which the employee is scheduled to work. Each employee is required to maintain on file with the employer the names of their spouse, children, mother, father, sister, brother, grandchildren, and grandparents to prevent abuse of this benefit. The Employer retains the right to demand proof of death and/or proof of relationship.

Employees who must travel a long distance for a funeral may be granted up to a 30-day unpaid leave.

ARTICLE 20 - JURY DUTY

When a full-time employee, who has completed their probationary period, is called for service as a juror, they will be paid the difference between the fee they receive for such service and the amount of earnings (at their straight-time hourly rate) lost by them by reason of such service, up to a limit of eight (8) hours per day, forty (40) hours per week, and three weeks in any calendar year, subject to the following provisions:

(a) Employees must present notice of jury duty to their Supervisor and Personnel Department within twenty-four (24) hours after receipt of selection for jury duty.

(b) In order to be eligible for such payments the employee must provide the Employer with a statement of the amount received for said jury duty and they will be paid by the Employer for the lost earnings as above provided.

(c) In the event an employee is released from jury service within four (4) hours of the start of their regularly scheduled shift, the employee must call the Personnel Department for instructions.

(d) **No employee shall be terminated for time spent serving on jury duty, no matter the duration.**

ARTICLE 21 - SEPARABILITY CLAUSE

In the event that any provision of this Agreement shall at any time be declared invalid by any Court or Administrative Agency of competent jurisdiction, the decision shall not invalidate the entire Agreement, it being the express intention of the parties that all other provisions shall remain in full force and effect. The parties agree to meet within thirty (30) days from any final decision of the court or agency to work out a satisfactory solution.

ARTICLE 22 – TERM OF AGREEMENT

This Agreement shall be in force and effect from **December 22, 2018 up to December 21, 2023.** It is understood that either party may open the Agreement to make changes or terminate it by sending sixty (60) days notice prior to **December 21, 2023.** The Agreement thereafter shall continue from year to year unless written notice be given one party to the other party of its desire to terminate or make changes in the Agreement, said notice to be given not less than sixty (60) days prior to any such termination of subsequent anniversary date.

Signed this 8th day of February **2019,** by duly authorized representatives of the contracting parties hereto:

FOR THE UNION

FOR MOUNTAIRE FARMS OF DELMARVA, INC.

SCHEDULE A

Employees@ 90 Days of Employment	**12-23-18** **$11.60**	**12-22-19** **$11.90**	**12-20-20** **$12.20**	**12-19-21** **$12.50**	**12-25-22** **$12.80**
Employees@ 6 Months of Employment	**12-23-18** **$12.85**	**12-22-19** **$13.15**	**12-20-20** **$13.45**	**12-19-21** **$13.75**	**12-25-22** **$14.05**

Live Hangers - $0.75 per hour above base rate.

All employees will receive their increases beginning on the payroll period immediately following their anniversary dates.

Appendix B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of:	
MOUNTAIRE FARMS INC.,	
Employer,	
and	Case No. 05-RD-256888
OSCAR CRUZ SOSA,	
Petitioner,	
and	
UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 27,	
Union.	

The above-entitled matter came on for hearing pursuant to notice before ANDREA J. VAUGHN, Hearing Officer, at the National Labor Relations Board, 100 S. Charles Street, Suite 600, Baltimore, Maryland, on Tuesday, March 10, 2020, at 9:00 a.m.

A P P E A R A N C E S

On Behalf of the Employer:

BARRY M. WILLOUGHBY, ESQ.
Young, Conaway, Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6666
bwilloughby@ycst.com

On Behalf of the Petitioner:

OSCAR CRUZ SOSA, Pro se

On Behalf of the Union:

JOEL A. SMITH, ESQ.
CHRISTOPHER R. RYON, ESQ.
Kahn, Smith & Collins, P.A.
201 North Charles Street, 10th Floor
Baltimore, MD 21201
(401) 244-1010
smith@kahnsmith.com
ryon@kahnsmith.com

Also Present:

LEISDY BEJARANO, Spanish Interpreter

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
No testimony taken.					

E X H I B I T S

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
BOARD'S		
B-1(a) through 1(h)	6	7
B-2	7	7
B-3	7	8
B-4	7	8

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PROCEEDINGS

(Time Noted: 9:23 a.m.)

HEARING OFFICER VAUGHN: The hearing will be in order. This is a formal hearing in the matter of Mountaire Farms Inc., Case No. 05-RD-256888, before the National Labor Relations Board. The Hearing Officer conducting this hearing is Andrea Vaughn.

Leisdy, will you let me know what speed you need me to -- if you need me to pause.

THE INTERPRETER: Okay. That's a good speed.

HEARING OFFICER VAUGHN: Okay, great, thanks.

All parties have been informed of the procedures at formal hearings before the Board by service of a statement of standard procedures with the notice of hearing. I have additional copies of the statement for distribution if any party wants one.

Will the parties or the counsel please state their appearances for the record? Petitioner?

MR. CRUZ SOSA: My name is Oscar Cruz Sosa.

HEARING OFFICER VAUGHN: For the Employer?

MR. WILLOUGHBY: My name's Barry Willoughby. I represent Mountaire Farms. And with me is Pat Townsend, who is the Director of Human Resources.

HEARING OFFICER VAUGHN: For the Union?

MR. SMITH: Good morning, Madam Hearing Examiner. My

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name is Joel Smith. I'm here on behalf of United Food and Commercial Workers Local 27. Along with me is my co-counsel, Christopher Ryon, and Nelson Hill, who is the chief of organizing and executive vice president.

HEARING OFFICER VAUGHN: Are there any other appearances?

(No response.)

HEARING OFFICER VAUGHN: Let the record show no response.

Are there any other persons, parties, or labor organizations in the hearing room who claim an interest in this proceeding?

(No response.)

HEARING OFFICER VAUGHN: Let the record show no response.

I now propose to receive the formal papers. They've been marked for identification as Board's Exhibit 1(a) through 1(h), inclusive, Exhibit 1(h) being an index and description of the entire exhibit. The exhibit has already been shown to all parties.

(Board's Exhibits 1(a) through 1(h) marked for identification.)

HEARING OFFICER VAUGHN: Are there any objections to the receipt of these exhibits into the record?

(No response.)

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HEARING OFFICER VAUGHN: Hearing no objections, the formal papers are received into evidence.

(Board's Exhibits 1(a) through 1(h) received in evidence.)

HEARING OFFICER VAUGHN: The parties have executed and I have approved a document which is marked as Board Exhibit 2. That exhibit contains several stipulations, including that the Union is a labor organization within the meaning of the Act and that the Employer meets the jurisdictional standards of the Board.

(Board's Exhibit 2 marked for identification.)

HEARING OFFICER VAUGHN: Are there any objections to the receipt of Board Exhibit 2?

(No response.)

HEARING OFFICER VAUGHN: Hearing no objections, Board's Exhibit 2 is received into evidence.

(Board's Exhibit 2 received in evidence.)

HEARING OFFICER VAUGHN: The Employer and the Union have both submitted statements of their position in this matter. The Employer's Statement of Position is marked as Board Exhibit 3.

(Board's Exhibit 3 marked for identification.)

HEARING OFFICER VAUGHN: The Union's Statement of Position is marked as Board Exhibit 4.

(Board's Exhibit 4 marked for identification.)

HEARING OFFICER VAUGHN: Both exhibits have been showed

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to all the parties. Are there any objections to the receipt of these exhibits into the record?

(No response.)

HEARING OFFICER VAUGHN: Hearing no objections, Board Exhibits 3 and 4 are received into evidence.

(Board's Exhibits 3 and 4 received in evidence.)

HEARING OFFICER VAUGHN: Briefly, I want to get some information of the collective bargaining history of the parties on the record. It's my understanding, based on the statements of positions, that the parties have a longstanding collective bargaining relationship dating back to about 1978; is that right?

MR. SMITH: They have a collective bargaining relationship continuously since 1978.

MR. WILLOUGHBY: And we agree.

HEARING OFFICER VAUGHN: Does anybody know if the original certification was a Board certification or a voluntary recognition?

MR. SMITH: I do not know.

HEARING OFFICER VAUGHN: It's also my understanding that the current relevant CBA, which is valid from December 22nd, 2018, to December 21st, 2023, is attached to the Union's Statement of Position as Exhibit 1.

MR. SMITH: Correct.

HEARING OFFICER VAUGHN: So the CBA is now in the record

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as an attachment to Board Exhibit 4.
MR. SMITH: Correct.
HEARING OFFICER VAUGHN: Are there any prehearing motions to be made by any party that need to be addressed at this time?
MR. SMITH: The Union notes that the Petitioner did not file a Statement of Position, and under the Board's Rules and Regulations, my understanding is that a Petitioner must also file. And the time for filing such has passed.
HEARING OFFICER VAUGHN: Do you want me to address that right now?
MR. SMITH: You could.
HEARING OFFICER VAUGHN: Okay. I will need to talk to the Regional Director about it. Could we go off the record for a few minutes?
MR. SMITH: Thank you.
MR. WILLOUGHBY: Yeah, I mean our position is that there's no need for it. It's a --
HEARING OFFICER VAUGHN: Let's make sure that -- are we still on the record?
MR. WILLOUGHBY: The position is that there's no need for the Petitioner to file a position statement. He's a layman. Obviously, he's not legally trained, and these are issues that the Union has been raising for briefing, so I don't see a need for him to file a position statement.

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HEARING OFFICER VAUGHN: Does the Petitioner have any response?
MR. CRUZ SOSA: Why am I going to file a petition? I do not have to.
HEARING OFFICER VAUGHN: By petition, does he mean Statement of Position?
MR. CRUZ SOSA: Yes.
MR. SMITH: For the record, my position is that the Board has, since the adoption of the new rules, which is now about to be revised, placed a premium on Statement of Positions so that the respective positions of the parties going into a hearing are plain and clear. In this proceeding, the issue of suspending the contract bar was raised sua sponte by the Regional Office. We, as yet, don't have, for the record, a position taken by the Petitioner with respect to that, or response.
And the noon day prior expectation or obligation has passed. There has been no position taken, for the record, by the Petitioner, which would breach the Board's rules, and there are cases, there are a couple cases, which I can cite, I don't have right with me, in which the Board's taken the position that it precludes the raising of issues or the adoption of a position, if a position stated hasn't been filed.
HEARING OFFICER VAUGHN: Is it your position, then, that

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the petition should be dismissed on that ground or just that he is now -- Petitioner is now precluded from submitting any Statement of Position?
MR. SMITH: I would take the position that it's infirm, the petition's infirm because it's not been fully perfected. And, additionally, the Petitioner would be precluded from taking a position and enjoining, for example, the position of the Employer with respect to suspension of the contract bar.
HEARING OFFICER VAUGHN: So it's not your position that it should be dismissed on those grounds, just that now he is --
MR. SMITH: No, I'm taking the position in the alternative is what I'm saying.
HEARING OFFICER VAUGHN: Okay. I understand. Anything further?
MR. WILLOUGHBY: Our position is that the petition should not be dismissed, and at most, the Petitioner could be precluded from submitting a brief. I doubt seriously, as a layman, he would be doing that anyway. So I think it's really a hypertechnical issue that is being used to try to divert the effort by the Petitioner to have a decertification vote.
HEARING OFFICER VAUGHN: Anything further?
MR. SMITH: Thank you, no.

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HEARING OFFICER VAUGHN: We'll go off the record for a few minutes.
(Off the record from 9:31 a.m. to 9:37 a.m.)
HEARING OFFICER VAUGHN: As to the question of whether or not the Petitioner has -- is now precluded from filing a Statement of Position or joining in the Employer's Statement of Position, I find that is so precluded because the deadline for filing such a Statement of Position has passed.
As to the second question as to whether or not his failure to file a Statement of Position warrants dismissal of the petition, I'll ask that you include your arguments in your post-hearing briefs so that the Regional Director can consider them.
MR. SMITH: Just for the record, I was referring -- I found it. I just turned the page. I'm referring to the Board's Rules and Regulations that refer to such statements of position, which would be Section 102.63(b)(3).
HEARING OFFICER VAUGHN: Thank you.
Are there any other prehearing motions that need to be addressed at this time?
(No response.)
HEARING OFFICER VAUGHN: Does the Petitioner wish to amend the petition to reflect the unit description as stated in the stipulations, which is Board Exhibit 2?
MR. CRUZ SOSA: I would like to state something.

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HEARING OFFICER VAUGHN: Okay, go ahead.
MR. CRUZ SOSA: Why should I change the petition? It's the person requesting is me, is myself and my co-workers who are supporting me.
HEARING OFFICER VAUGHN: My question is, on the face of the petition, the unit description, which shows the employees that are included and excluded from the bargaining unit, does not match the unit description that you just stipulated to this morning on this page.
THE INTERPRETER: Does not?
HEARING OFFICER VAUGHN: It does not match. So I'm asking if he wants to amend the petition to include the correct unit description, which is No. 6 on the stipulations.
It's Board Exhibit 2. It looks like this. I think he's holding it, or you're holding it. Are you looking for the petition itself? I'm sorry. I'm showing him a copy of the petition.
MR. CRUZ SOSA: Can I tell you the name of each department or the department?
HEARING OFFICER VAUGHN: I'm not asking him -- I'm not asking you to tell us the name of each department. I'm just asking if you want the petition to be amended to include the correct bargaining unit.
MR. CRUZ SOSA: This is the one.

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HEARING OFFICER VAUGHN: And by this, you're referring to the bargaining unit description in Board Exhibit 2?
MR. CRUZ SOSA: Yes.
HEARING OFFICER VAUGHN: Are there any objections to amending the petition?
MR. SMITH: There's no objection to amending the petition. I do have one question I want to raise. In our Statement of Position, we explained how there are three cohorts of employees under the same roof. And one of the cohorts is temporary employees who perform or may perform the same functions as bargaining unit employees. The unit description and the exclusions clearly excludes persons who are members of the Teamsters bargaining unit but does not exclude specifically temporary employees. Now, I note that the list of employees provided by the Employer in rough numbers approximates the number that we have or have estimated as to bargaining unit members as opposed to persons in the two other cohorts. We would suggest that the unit exclusions be amended beyond the contract description to exclude temporary employees consistent with the actual practice --
HEARING OFFICER VAUGHN: You want to amend the stipulations to add temporary workers?
MR. SMITH: To add temporary workers.
HEARING OFFICER VAUGHN: Any objections?

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MR. WILLOUGHBY: No, no objection.
HEARING OFFICER VAUGHN: Do you have any objection to excluding temporary workers from the bargaining unit description?
MR. CRUZ SOSA: No objection.
HEARING OFFICER VAUGHN: What I'll do then is ask the court reporter to give me back Exhibit Board Exhibit 2, and we'll make that -- I'll make that change and have each party initial.
MR. SMITH: Thank you.
HEARING OFFICER VAUGHN: Temporary employees?
Could you ask him to initial the change?
So the petition is now amended to include the stipulated bargaining unit descriptions.
Any other prehearing motions?
(No response.)
HEARING OFFICER VAUGHN: Are there any motions to intervene in these proceedings to be submitted to the Hearing Officer at this time?
(No response.)
HEARING OFFICER VAUGHN: Are the parties aware of any other employers or labor organizations that have an interest in this proceeding?
(No response.)
HEARING OFFICER VAUGHN: Let the record reflect there's

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no response.
I will now ask the parties to briefly identify the issues for the hearing and their positions on each issue. I would start with the Petitioner. I'm asking that the parties identify the issues for the hearing, their positions on each issue, if he wants to -- if he wants to state a position or state an issue for the hearing or a position on the hearing.
MR. CRUZ SOSA: Can you explain?
HEARING OFFICER VAUGHN: Sure. So the purpose of this hearing is to determine whether or not the petition should go forward to an election.
MR. CRUZ SOSA: I want the petition to go forward. I have decided to file this petition. I do not wish to continue with the Union. They are taking away my money, and I have no benefits. Also, I filed this petition because all my co-workers at Mountaire do not want the Union. So I filed the petition, and I collected signatures from them.
Can I say something else?
MR. SMITH: I'm going to object to his statements at this point. Beyond the scope of the hearing.
HEARING OFFICER VAUGHN: I would ask him to keep his statement of his position or statement of the issues just to this hearing as to whether or not the petition would go forward.

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MR. CRUZ SOSA: Okay.
HEARING OFFICER VAUGHN: Anything else?
MR. CRUZ SOSA: I just want to put a stop --
MR. SMITH: Objection, again, because it's beyond the scope of the hearing.
HEARING OFFICER VAUGHN: He hasn't -- well, she hasn't finished translating what he said.
MR. SMITH: Yes, but I understand what he's saying, and I want to put it on the record.
HEARING OFFICER VAUGHN: I would ask, Leisdy, I think -- please finish translating what he was saying.
THE INTERPRETER: Okay, so he was saying he wants to put a stop to the Union. After he filed the petition, the Union has been visiting the co-workers that signed.
HEARING OFFICER VAUGHN: So, Mr. Cruz, I would again ask you to please keep your comments, your statement of position, just to the issue of whether or not the petition should go forward, not any other issues.
For the Employer?
MR. WILLOUGHBY: So we believe the petition should go forward. The contract bar should not apply because the union security clause is invalid and illegal on its face. And we've submitted a position statement on that. And we'll be briefing that issue, but we believe that's the issue for the hearing.

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HEARING OFFICER VAUGHN: Thank you.
For the Union?
MR. SMITH: Madam Hearing Examiner, I'm prepared to give an opening statement with regard to the issues, if I may.
HEARING OFFICER VAUGHN: You may.

OPENING STATEMENT

MR. SMITH: As Point 4 in the stipulations reflect, the parties are under an agreement that was valid or to be valid from December 22nd, 2018, to December 21st, 2023. And the dispute here is whether the CBA bars the processing of the petition in this case. The effect of the CBA, obviously, is to raise a contract bar and to forestall the RD proceeding. The doctrine of contract bar was recognized as a principle going back to the earliest days of the Act. In fact, one of the first cases that I've found on this issue is National Sugar Refinery, 10 NLRB 1410 at 1415, which was decided in 1939. It describes the policy that was adopted at that point in time and has gone forward.
The CBA in this case contains a union security agreement that is perfectly lawful under Section 8(a)(3). The agreement appears in Article 3, Section 1 of the CBA, and it consists of several different parts, the first part containing the first sentence is a maintenance of membership agreement saying that employees covered by the agreement who are members in good standing as of the execution date of the

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agreement are to remain members in good standing. The doctrine of the maintenance of membership agreement was first approved by the Board in a case called Charles A. Krause Milling, 97 NLRB 536, decided all the way back in 1951. It's almost as old as I am. And that doctrine has been followed ever since, and it ratifies and acknowledges the statement that's in the agreement.
The agreement additionally goes on to say that those employees who were not union members as of the execution date of the agreement shall, on the 31st day following the beginning of such employment, meaning employment under the agreement as executed, become and remain members in good standing. The effect of the second proviso in the reference to such employment was to reach both old, meaning incumbent employees who were not union members, and new hires. Those who were not members of the Union are to become members of the local within the 31st day after the beginning of the employment under such agreement, that is, under the agreement, whether under the CBA as of the execution date or subsequent hire. The effect of this use of language was to extend the period -- the grace period for becoming a union member, the time by which one must become a union member if one was an incumbent employee, a total of 79 days after December 22nd, 2018. The effect of the language in Section 1 of Article 3 of the contract was to extend the grace

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period, more than double the period contemplated under the Act. In other words, it is more generous rather than less generous than Section 8(a)(3).
As succinctly summarized in Paragon Products, which is at 134 NLRB 662, a 1961 case, and reapproved in Four Seasons Solar Products, 332 NLRB 67, which was decided in 2000, there are three or four hallmark rules of decision that are to be applied by the Board and which the Board applies itself to the cases in which there is a dispute over the grace period, a dispute over the effective nature of a union security clause as a contract bar.
Number 1, there is a presumption of legality. In other words, the Board and the Region are to presume that the union security clause is illegal, and I quote the Solar Products language, "It is to reject presumption of illegality."
Number 2, the cases hold, almost uniformly, since Akista (ph.) that a union security clause need not affirmatively set out or track the exact terms of Section 8(a)(3) of the law.
Third, that in order to be or suspend the contract bar, a union security clause, and I use these words which appear and reappear in the case law, a union security clause must be clearly unlawful on its face. And this particular union security clause is not.

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The fourth principle, which is equally important, is that what is unlawful under these cases that have looked at the effectiveness of the grace period language is that the -- to be unlawful, the union security clause must, under examination, must specifically withhold from incumbent union members and/or new employees the statutory 30-day grace period. In other words, the plain language on the face of the contract, and I quote the language of the cases, must show the denial of the statutorily required 30-day grace period to non-member incumbent employees. And this, our particular union security clause did not do. Nowhere does the Mountaire union security agreement anywhere violate any of these four principles of rules of decision applied by the Board.

Of course, the grace period was added to the Act under the Taft-Hartley Amendments in 1947. That's why we find the case law beginning in the early 1950s with the Charles Krause case and others like it. After Charles Krause was decided, the next question considered by the Board was whether union security agreements must track the words of Section 8(a)(3) or literally extend the 30-day grace period to incumbent and old employees. And what the case law has evolved to say over the years is, no, it must not. In fact, the Supreme Court said as much in its case in Marquez, looking at a Screen Actors Guild case.

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The cases that apply the rules of contract interpretation and the presumptions that I'm speaking with begin with Snyder Engineering, which is at 90 NLRB 783, page 784, a 1950 case, which held in that particular case that the contract was, quote, "Inartistically drafted and somewhat ambiguous." The reading of its provisions required -- enabled the mutual intent of the parties to extend union security as lawfully permitted under 8(a)(3).

Following that is another case, Kimble Glass, 96 NLRB 640 at page 641, in which it again approved the Board, a lawful if inartistically or inartistic union security provision. Again, in American Seating, 98 NLRB 800 at page 802, the Board referred to reading the contract as a whole and looking at the contract interpretation process.

The baseline rule of decision was reached in 1954 in a case called Humboldt Lumber Handlers, 108 NLRB 393 at page 395, again, a 1954 case. And when discussing the grounds that are lawful for discharge, the Board said, quote, "This argument presumes illegality, whereas the proper presumption is one of legality, namely, that the obligation to discharge extends only to situations recognized as valid under the statute, in other words, the affirmative presumption of legality.

In Keystone, as you know, I'm sure, having read the case law before we got here, which was at 121 NLRB 880, a 1958

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case, the Board went in the other direction and said that contracts should attempt to track the language of 8(a)(3) and should attempt to follow more carefully the contract language in their exact terms. In fact, as much as requiring repetition of contract language in haec verba, that case lasted as law for only about 2½ years, because in 1961 the Board decided Paragon Products, 134 NLRB 662 at page 663, it went the other direction, and the Board held that because contracts create the foundation for labor stability and stability in labor relations, the doctrine of contract bar is to be given a prime spot in the management of labor-management relations, because they are conducive to labor peace and the doctrine -- or some doctrine to pierce the contract bar is counterintuitive to that.

So what the Board did in Paragon, the Board reversed Keystone and its strict interpretation of the rule. And at 134 NLRB at page 64, it expressed two reasons for doing that. First, we do not consider it sound administrative practice to continue to apply a rule with respect to union security which indulges presumption of illegality following in authority the Supreme Court's holding in a case called NLRB v. News Syndicate, which was decided in 1961 and reported at 365 U.S. 695. The Board specifically followed and captured the Supreme Court precedent, saying a presumption of illegality must be applied to such matters as

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the Supreme Court would.

And, second, the second rationale was to presume illegality would, at the very least, require additional evidence to define whether a contract is legal or illegal. Of course, even back in Keystone, the Board had already decided that it was not going to permit extrinsic evidence. And Keystone had said as much at 121 NLRB page 886. So, for those reasons, it said it was going to reject the Keystone principle and go back and reinstate prior law that had existed from '50-'51 through when Keystone was decided in '58. And what it said in Paragon, the Board said, "We do not thereby engage in presumptions of illegality or in findings of intent for contracts which on their face contain forbidden union security clause language require no evidence."

In sum, Paragon has three holdings. And they all appear at page 134 NLRB page 666. Number 1, we hold that only those contracts containing a union security provision, which is clearly unlawful on its face, may not bar a representation petition. It's one of the factors of rules of decision that I mentioned at the outset. No. 2, in Paragon, they also said at page 666, "Unlawful are only those clauses which specifically withhold from incumbent employees and/or new employees the statutory 30-day grace period. And No. 3, contracts containing ambiguous language,

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though not clearly unlawful, will bar representation proceedings nonetheless. And those are the three key holdings of Paragon, which apply here and which apply to the union security clause that the Regional Director has found interest in in this particular case.

Now, the rule of decision, these three key rules of decision have been the law of the Board since the Board reversed Keystone in its decision in Paragon Products issued in 1961. So going from 1961 to 2000, if my arithmetic is correct, we are talking about decades of fixed court -- Board precedent, which adopts the position that would find lawful and enforceable this union security clause as a contract bar.

The Board's examination of the two cases in the early '60s, that of Standard Molding and Federal-Mogul, do not change that outcome. In fact, those two cases were discussed specifically in Four Seasons Solar Products, 332 NLRB 667 -- or 67, a 2000 case, which you referred to yourself. And they defined the essential difference between execution date and effective date of the contract and how they operate separately and differently to give effectuation to the union security language in a particular clause and whether or not the clause reaches the expectations of 8(a)(3).

We've explained in our brief what our contract does.

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And what our contract does, as the Employer has been settled and agreed to accept for decades as well, because this is decades-old language, is that the effectuation of the obligation to become a member, if one is a non-member, even as an incumbent employee, occurs after the execution date, 31 days after the execution date. Thus, as I said at the beginning of my opening, it supplies more grace period rather than less grace period and certainly does not override or abrogate the 8(a)(3) expectation that's so often stated in the case law.

Our position, thus, is that our clause is lawful, and it's lawful because it meets the standard of the presumption of legality. It need not affirmatively set out or track the terms of 8(a)(3), although it does to some extent. It is not clearly unlawful because it doesn't bar use or operation of the 30-day rule in Section 8(a)(3). And it does not specifically withhold from incumbent non-union members or new employees in any way the statutory 30-day grace period. And we would suggest that all of the case law, ending most recently with the Solar Products case, supports our position. And we would ask that the contract bar be enforced by the Region. Thank for your patience.

HEARING OFFICER VAUGHN: Thank you.

Remind the parties that the burden of proof lies with the party asserting the contract bar. Here, that party is

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the Union. It's my understanding the issue to be litigated today and in post-hearing briefs is whether the union security clause in the collective bargaining agreement is lawful, and thus, the petition must be dismissed under the contract bar.

Are there any other issues that I am not aware of?

MR. WILLOUGHBY: No. I would just say we disagree with the statements made by Mr. Smith, but we understand that's really to be covered in the briefing, so I'm certainly not going to kind of give a long statement about our position.

HEARING OFFICER VAUGHN: Any other issues that are to be litigated that I am not aware of?

MR. SMITH: We, of course, would invite the reader of the record to pay close attention to our statements on the record, knowing the case-handling process that's generally observed in the Region with regard to issuing DD&Es.

HEARING OFFICER VAUGHN: Thank you.

Do any of the parties wish to present evidence beyond the exhibits that are already in the record?

MR. SMITH: As defined in Paragon and subsequent cases, no, we would not.

MR. WILLOUGHBY: We do not intend to.

THE INTERPRETER: He wants to know if he can say something.

HEARING OFFICER VAUGHN: At this point, we are just

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asking whether or not there is evidence on the issue as to whether or not the petition should go forward based on the legal question about the union security clause. If he has evidence that he wishes to present about that, then we would hear it.

MR. CRUZ SOSA: No.

HEARING OFFICER VAUGHN: Let the record reflect that all the parties have responded that they do not wish to present further evidence.

At this point I'd like to go off the record to discuss some of the election details, and we'll go back on the record once we've come to consensus. If no consensus is reached, then I'll give each party opportunity to be heard on the record as to their positions.

MR. WILLOUGHBY: Okay.

HEARING OFFICER VAUGHN: Is everybody okay with that?

MR. SMITH: Yes.

(Off the record from 10:12 a.m. to 10:30 a.m.)

HEARING OFFICER VAUGHN: The parties have agreed to holding two voting times from 5:00 a.m. to 10:00 a.m. and 2:00 p.m. to 7:00 p.m. on a Wednesday as soon as practicable after the Regional Director's decision. The polling place will be the training room at the Employer's facility. There's a need for foreign language ballots. We need ballots in English, Spanish, and Haitian Creole.

Do you know the breakdown of about what percentage of each language you would need?
MR. TOWNSEND: I would split it evenly.
HEARING OFFICER VAUGHN: So about a third for each.
MR. TOWNSEND: Um-hum.
HEARING OFFICER VAUGHN: The employees will vote before and after their shifts. There are no accessibility issues requiring any accommodations that the parties are aware of.
I'm going to ask the Employer's representative to state his name and contact information for the record.
MR. TOWNSEND: Patrick Townsend, complex -- director of human resources, phone number 302-381-7798. Alternatively, Kevin Braunskill, the complex human resources manager, 302-988-6320.
HEARING OFFICER VAUGHN: Could you spell his name?
MR. TOWNSEND: Last name is B-r-a-u-n-s-k-i-l-l, Braunskill.
HEARING OFFICER VAUGHN: I also note that the payroll period ends every Saturday. The most recent one stated by the Employer is February 22nd.
Any other issues related --
MR. SMITH: That would be the cutoff date, right, for eligibility?
HEARING OFFICER VAUGHN: I believe -- is the cutoff --
Can we go off the record for a second?

(Off the record at 10:32 a.m.)
HEARING OFFICER VAUGHN: We can go back on the record.
So the payroll cutoff date would be the Saturday before the decision of the Regional Director.
MR. SMITH: We would not concur on that because of the fluctuation of the workforce and the possibility of influencing who may be eligible to vote. We would just state for the record our objection to that.
HEARING OFFICER VAUGHN: Do you have a response?
MR. WILLOUGHBY: I think that --
MR. SMITH: I think we should use the date before the petition was filed.
MR. WILLOUGHBY: I think the date you stated is correct.
HEARING OFFICER VAUGHN: Okay. Does he want to state a position on that?
MR. CRUZ SOSA: No.
HEARING OFFICER VAUGHN: Okay, thank you.
Anything further from any of the parties?
MR. WILLOUGHBY: Nothing from the Employer.
MR. SMITH: I would just reiterate that our concurrence in the election arrangements is not a waiver of our legal position, and we ask the reader of the record to pay careful attention to the rules of decision that apply, which have existed for 60 years now as applied under Board law.
HEARING OFFICER VAUGHN: Anything further from the

Petitioner?
THE INTERPRETER: He would like to say something off the record.
HEARING OFFICER VAUGHN: We'll wait then for when we conclude the hearing.
As mentioned earlier, briefs are due by the close of business on Friday, March 20th. Any motion for extension should be addressed to the Regional Director. The parties are reminded that they should request an expedited copy of the transcript from the court reporter. Late receipt of the transcript will not be grounds for an extension of time to file briefs if you fail to do so.
Can we go briefly off the record?
(Off the record from 10:34 a.m. to 10:35 a.m.)
HEARING OFFICER VAUGHN: We can go back on the record.
If there is nothing further, the hearing will be closed.
Hearing nothing further, the hearing is now closed.
Thank you.
(Whereupon, at 10:36 a.m., the hearing in the above-entitled matter was closed.)

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 5, in the matter of MOUNTAIRE FARMS, INC., Case No. 05-RD-256888, at Baltimore, Maryland, on March 10, 2020, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording, at the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected exhibit files are missing.

_____

Tom Bowman
Court Reporter

Appendix C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

MOUNTAIRE FARMS, INC.

Employer

and Case 05-RD-256888

OSCAR CRUZ SOSA

Petitioner

and

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 27, a/w UNITED FOOD AND COMMERICIAL WORKERS INTERNATIONAL UNION, AFL-CIO

Union

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Oscar Cruz Sosa (the Petitioner) filed the petition herein with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (Act), seeking to decertify the United Food and Commercial Workers Union, Local 27 a/w United Food and Commercial Workers International Union, AFL-CIO (Union) as the exclusive collective-bargaining representative of roughly 800 employees employed by Mountaire Farms, Inc. (the Employer) at its Selbyville, Delaware facility. The sole issue in this proceeding is whether the instant petition is barred by the in-force collective-bargaining agreement that applies to the bargaining unit involved herein. The Petitioner and the Employer contend that the petition should proceed and that I should direct an election, arguing that the union-security clause contained in the operative collective-bargaining agreement is unlawful, thus removing the contract as a bar to an election. The Union counters that the union-security clause comports with extent Board law and meets all criteria for a lawful union-security clause, thus preserving the contract's ability to serve as a bar to a petition.[1]

A Hearing Officer of the Board heard this case on March 10, 2020, in Baltimore, Maryland, where the parties entered into several stipulations, and were given the opportunity to present evidence and state their respective positions on the record. Additionally, the parties were given the opportunity to submit post-hearing briefs for my consideration. I have reviewed the stipulations, the evidence, and the arguments presented by the parties, as well as the applicable

[1] As will be discussed below, the Union also argued at hearing, and in its initial position statement, that the petition was never perfected because the Petitioner did not file a Statement of Position by the appropriate deadline.

legal precedent. As will be discussed in detail below, I find that the collective-bargaining agreement in place between the Employer and the Union, based on the clearly unlawful union-security clause contained therein, cannot—and does not—serve as a bar to the processing of this petition. Accordingly, I will direct an election among the employees in the stipulated unit, described below.

I. FACTUAL OVERVIEW

The Employer operates a poultry processing plant in Selbyville, Delaware, at which it is engaged in growing, processing, and selling processed poultry products in wholesale and retail markets.[2] The Union is currently the exclusive collective-bargaining representative for the following unit of employees (Unit):

> All regular employees now employed or who may be employed by the Employer at their Selbyville, Delaware Poultry Processing Plant located at Hossier and Railroad Avenue on the Delmarva Peninsula, as follows: All production employees including but not limited to the following: live hangers, pinners, eviscerating, grading, cut-up, sawing, deboning, and other further processing employees, but excluding all employees currently covered under contract between Mountaire Farms of Delmarva and Local 355 of the Teamsters Union.[3]

According to the parties, the collective-bargaining relationship between them has existed since around 1978. Currently, the Employer and the Union are parties to a collective-bargaining agreement (Agreement) governing the terms and conditions of employment of the Unit. The Agreement was executed by the parties on February 8, 2019, but is effective by its terms from December 22, 2018, through December 21, 2023.

The preamble of the Agreement begins as follows:

> THIS AGREEMENT effective the **22nd day of December 2018** by and between MOUNTAIRE FARMS OF DELMARVA, INC., Selbyville, Delaware Poultry Plant

[2] The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

[3] This unit description appears as it does in the parties' collective-bargaining agreement. At hearing, the parties stipulated to the following Unit description:

Included: All regular full-time and part-time production employees employed by the Employer at its Selbyville, Delaware Poultry Processing Plant currently located at Hoosier and Railroad Avenue on the Delmarva Peninsula, including but not limited to the following: live hangers, pinners, eviscerating, grading, cut-up, sawing, deboning, and other further processing employees.

Excluded: All other employees, including employees currently represented by Local 355 of the Teamsters Union; temporary employees; and managers, supervisors, and guards as defined in the National Labor Relations Act.

> located at Hoosier Street and Railroad Avenue, herein referred to as the 'EMPLOYER,' and UNITED FOOD AND COMMERCIAL WORKERS UNION, Local 27, Baltimore, Maryland herein referred to as the 'UNION' . . . (emphasis in original)

The Agreement's union-security clause is found in Article 3 of the Agreement, and is reproduced here in its entirety:

ARTICLE 3 – UNION SECURITY AND CHECK-OFF

1. It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the execution date of this Agreement shall, on or after the thirty-first day following the beginning of such employment, even if those days are not consecutive, shall become and remain members in good standing in the Union.

2. The Employer shall deduct periodic dues and initiation fees uniformly required as a condition of membership in the Union, and regularly authorized assessments on a weekly basis from the wages of each employee covered by this Agreement who has filed with the Employer a written assignment authorizing such deductions, which assignments shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement whichever occurs sooner. Such dues, initiation fees and assessments shall be forwarded to the Union within fifteen (15) days. The Union will send the Employer a letter by certified mail notifying the Employer of any change in the amount of dues; initiation fees and assessments shall be kept separate and apart from the general funds of the Employer and shall be deemed trust funds.

3. The Union shall indemnify and hold the Employer harmless from any and all claims, demands, suits or other forms of liability which shall arise out of or by reason of action taken or not taken by the Employer in compliance with the provisions of Sections 1 and 2 of this Article.

The Agreement culminates with the following language: "Signed this 8th day of February 2019, by duly authorized representatives of the contracting parties hereto."

II. POSITIONS OF THE PARTIES

The predominant issue involved in this case is whether Article 3 of the Agreement is unlawful, resulting in the Agreement forfeiting its status as a bar to the instant petition. Additionally, the Union argued at hearing, though not in its post-hearing brief, that this petition should be dismissed because Petitioner did not file a Statement of Position prior to the applicable deadline. Below are the principle contentions of the parties.

1. The Union.

At the outset, the Union argues that the petition should be dismissed because the Petitioner did not file a Statement of Position by the deadline as articulated in the Notice of Hearing for filing of position statements. The Union argued at hearing that the Petitioner is required to file a Statement of Position, and because he did not do so, the petition should be dismissed.

The Union further asserts that the petition must be dismissed because it is barred by the Agreement. First, the Union argues that the Agreement's union-security clause bears all of the hallmark requirements for a valid union-security provision—it is not clearly unlawful on its face; it does not specifically withhold from incumbent nonunion members and/or new employees the statutory 30-day grace period, and a plain reading of the contract does not show to the contrary; and it is not incapable of lawful interpretation. The Union maintains that because the union-security clause is tied to the execution date of the contract, nonmember employees are actually granted 79 days from the effective date to become (or elect not to become) a Union member, much longer than the statutory requirements in Section 8(a)(3).

Moreover, the Union argues that "employment," as the term is used in Article 3, should be understood as employment after the Agreement was executed, not before. Once again, as it pertains to nonmember employees as of the execution date of the Agreement, Article 3 states ". . . and those who are not members on the execution date of this Agreement shall, on or after the thirty-first day following the beginning of such employment . . . become and remain members in good standing in the Union." The Union contends that the most natural reading of the phrase "such employment" is employment <u>after</u> execution of the Agreement, such that the statutory grace period for a nonmember employee employed sometime prior to the execution date of the Agreement did not begin to run until the Agreement was executed. The union-security clause only pertains to employment "covered by the agreement" and thus, according to the Union, employment covered by the union-security clause could not have begun prior to the execution date.

Lastly, the Union maintains that the Agreement, as well as Article 3, were not made effective retroactively. The Union argues that, throughout the Agreement, it is clear that it was intended to be effective beginning December 22, 2018, and was merely signed at a later date.

2. <u>The Employer</u>.[4]

Initially, the Employer and the Petitioner take the position that the Petitioner was not required by the Board's Rules and Regulations to file a Statement of Position prior to the hearing. According to the Employer, the Board's Rules and Regulations do not include a requirement that an petitioner for a decertification election must file a Statement of Position prior to a hearing. Thus, the Employer argues that Section 102.63(b)(3) of the Board's Rules and Regulations only mandates that an employer or certified or recognized representative of employees shall file a position statement prior to a hearing.

Moreover, both the Petitioner and the Employer argue that the petition should be allowed to move forward, as the Agreement does not bar me from processing the petition further. The

[4] Petitioner's positions on the issues involved herein align with the Employer. I will thus include the Petitioner's positions alongside the Employer's where appropriate.

Employer advances two arguments in support of its position. First, the Employer argues that Section 1 of Article 3 is unlawful in that it fails to provide the statutorily mandated 30-day grace period. In that regard, the Employer maintains that the express terms of the Agreement show it was retroactively effective—more than 41 days before the date it was signed. Thus, according to the Employer, by the time the contract was executed, the mandated 30-day grace period had already expired. Furthermore, the Employer argues that the phrase "such employment," as used in Section 1 of Article 3, refers to an individual's hire date with the Employer, not employment following the execution of the contract as espoused by the Union.

Secondly, the Employer argues that Section 2 of Article 3 is also unlawful. Article 3, Section 2, requires, among other things, that the Employer deduct regularly authorized assessments, in addition to periodic dues and initiation fees, from the wages of employees covered by the Agreement and who have filed with the Employer a written assignment authorizing such action. According to the Employer, the requirement that authorized assessments be paid is contrary to Supreme Court and Board precedent, citing *Ace Car and Limousine Service, Inc.*, 357 NLRB 359 (2011). Thus, because in its view both Section 1 and Section 2 of Article 3 are unlawful, the Employer argues that the Agreement cannot bar the instant petition.

III. APPLICABLE BOARD LAW

The Board's well-settled contract bar doctrine attempts to balance often competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

An unlawful union-security clause in an otherwise in-force collective bargaining agreement will render that agreement incapable of barring a representation petition. "A clearly unlawful union-security provision for this purpose is one which by its terms clearly and unequivocally goes beyond the limited form of union-security permitted by Section 8(a)(3) of the Act, and is therefore incapable of a lawful interpretation." *Paragon Products Corp*., 134 NLRB 662, 666 (1961).[5] Importantly, the union-security clause must be clearly unlawful, as "[c]ontracts containing ambiguous though not clearly unlawful union-security provisions will bar representation proceedings in the absence of a determination of illegality as to the particular provision involved by the Board or a Federal court pursuant to an unfair labor practice proceeding." *Paragon Products Corp.*, 134 NLRB at 667. Thus, extrinsic evidence cannot be used to establish the illegality of the union-security provision—"[n]o testimony and no evidence will be admissible

[5] Section 8(a)(3) of the Act, in relevant part, states: "[t]hat nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, which is the later . . ." National Labor Relations Act, 29 U.S.C. § 158(a)(3).

in a representation proceeding, where the testimony or evidence is only relevant to the question of the practice under a contract urged as a bar to the proceeding." *Id*. Unlawful union-security provisions include those which "specifically withhold from incumbent nonmembers and/or new employees the statutory 30-day grace period to comply with an otherwise-lawful union security clause (see Section 8(a)(3) of the Act)." *Id*. at 666.

Contracts that are, on their face, retroactively effective and that tie the union-security grace period to the effective date of the contract, thus depriving nonmember incumbent employees the 30-day grace period, will not bar a petition. *Standard Molding Corp*., 137 NLRB 1515, 1516 (1962). However, the mere fact that a contract is signed and executed by the parties on a date subsequent to the effective date of the contract does not, by itself, prove the retroactive nature of the contract. If the contract makes clear that the agreement was made and entered into, and effective on, a date earlier in time than the execution date, the Board will not find the contract to be retroactive. See *Federal-Mogul Corp.*, 176 NLRB 619 (1969); *Four Seasons Solar Products Corporation*, 332 NLRB 67 (2000); *Superior Laundry Services, LLC*, Case 29-RC-12093 (2011) (not reported in Board volumes).

The Board has also found union-security provisions to be unlawful when they "expressly require as a condition of continued employment the payment of sums of money other than 'periodic dues and initiation fees uniformly required.'" *Paragon Products Corp.*, 134 NLRB at 666. Furthermore, the Board has "consistently held that 'assessments' are not included within the meaning of the term 'periodic dues' as used in the proviso to Section 8(a)(3) permitting the execution of union-security agreements." *Santa Fe Trail Transportation Company*, 139 NLRB 1513, 1515 (1962). Once again, however, *Paragon Products* requires that a union-security clause which raises questions as to the lawfulness of an assessment-payment requirement must clearly be unlawful on its face to not bar an election.

III. ANALYSIS

1. <u>The Petitioner was not required by the Board's Rules and Regulations to file a Statement of Position prior to the hearing</u>.

Parties to a decertification petition that are required to file a Statement of Position prior to hearing are directed to Section 102.63(b)(3) of the Board's Rules and Regulations. There, the Board has detailed that, in decertification cases, "the employer and the certified or recognized representation of employees shall file with the Regional Director . . . their respective Statements of Position . . . by the date and time specified in the Notice of Hearing." Section 102.63(b)(3). The text of Section 102.63(b)(3) does not include a requirement that an decertification petitioner file a Statement of Position prior to hearing.[6] Indeed, the Notice of Hearing that issued in this proceeding on February 25, 2020, notified only the Employer and the Union that, pursuant to Section 102.63(b), they were required to complete and file the Statement of Position. The Petitioner was not required to file a Statement of Position prior to hearing. Accordingly, I find no

[6] Although advancing this argument at hearing, the Union did not brief this issue, and thus has not provided me with any authority to the contrary.

merit in the Union's argument that the petition must be dismissed because the Petitioner did not file a Statement of Position prior to the hearing.

2. Article 3, Section 1 is a clearly unlawful union-security clause, and thus the Agreement cannot serve as a bar.

As extent Board law requires, I am only permitted to examine the terms of the Agreement "as they appear within the four corners of the instrument itself" in assessing whether it retains is status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977). There is no contention that the Agreement, outside of the challenged union-security clause, is defective or does not conform to the Board's requirements that define a lawful contract. Thus, in examining the Agreement, the sole issue for this proceeding is whether Article 3 is unlawful such that the Agreement cannot serve to bar the instant petition. After careful review of the Agreement, Article 3 and the above-cited Board precedent, I find that Article 3 is "incapable of a lawful interpretation" and cannot serve as a bar to the petition.

Specifically, I find that Article 3, Section 1, of the Agreement fails to afford nonmember incumbent employees the statutorily mandated 30-day grace period. I do so for the following reasons. Article 3, Section 1 effectively groups employees into two categories: the first is employees who are members of the Union in good standing at the time of the Agreement's execution, and the second are those employees that are not Union members at the time the Agreement was executed. With respect to the employees who are not Union members "on the execution date" of the Agreement, Article 3, Section 1 mandates that those employees "shall, on or after the thirty-first day following the beginning of such employment, even if those days are not consecutive, shall [sic] become and remain members in good standing in the Union." (emphasis added)

The parties acknowledge that while Section 8(a)(3) ties an employee's 30-day grace period to the later of the applicable contract's effective date or the date of employment, the Agreement in this case ties that grace period to the execution date of the Agreement. Yet while the language of Article 3, Section 1 provides nonmember incumbent employees 31 days to become Union members, it sets "the beginning of such employment" as the operative date to begin that 31-day period. Read literally, then, the only plausible interpretation of Article 3, Section 1 is that a nonmember employee as of the date of the Agreement's execution has 31 days following the beginning of that employee's employment to become and remain a member in good standing in the Union. Thus, any incumbent employee who was hired prior to the Agreement's execution date—February 8, 2019—would have been denied the statutorily mandated 30-day grace period. Because Article 3, Section 1 mandated that nonmember employees become Union members after 31 days following the beginning of their employment, and not 31 days following the execution of the contract, Article 3 is unlawful.

The Union reads Article 3, Section 1 of the Agreement to define "the beginning of such employment" as employment following the execution date of the contract. In other words, because Article 3, Section 1 speaks of employment "covered by this agreement," and no employment can be "covered" by the Agreement until the Agreement was executed, the Union argues that the grace

period in Article 3 begins on the date of execution for any nonmember incumbent employee employed as of that date. The Union's argument, though, is unavailing.

For all intents and purposes, the Union disregards any employment prior to the signing of the Agreement. However, that argument cannot be squared with other provisions in the Agreement, and the lawfulness of the union-security clause may be analyzed by reading it in the context of other clauses. See *H. L. Klion, Inc.*, 148 NLRB 656, 660 (1964). Article 5 – Wages – provides that "whenever any employee covered by this Agreement is receiving a higher rate than the minimum rate provided for at the time of the signing of this Agreement, such differential shall continue for the term of this Agreement." Clearly the parties understood that the Employer, at the time that the Agreement was executed, may have incumbent employees in its employ whose then-existing terms and conditions of employment would thereafter be governed by the Agreement upon its execution. I cannot then, as the Union suggests, view employees' employment with the Employer as that which exists only on and after the Agreement's execution date, because the Employer and the Union plainly considered the terms and conditions of Unit employees as they existed prior to execution of the Agreement. Therefore, a complete reading of the Agreement requires finding that the phrase "covered by this agreement" is meant to define which of the Employer's employees (i.e. the Unit) who would thereafter be subject to the Agreement, <u>not</u> that employment with the Employer can only be viewed from the Agreement's execution date forward. Accordingly, I find that the only plausible interpretation of the phrase "beginning of such employment" as used in Article 3, Section 1 is the beginning of an employee's employment with the Employer.

The union-security provision in Article 3 is not the only such clause to come before the Board that tied the union-security clause to the execution date of the collective-bargaining agreement. The Board found facially lawful a union-security clause that required that "those who are not members on the date of execution of this agreement shall, on the thirtieth day following the date of execution of this agreement, become and thereafter remain members in good standing in the [u]nion." *Checker Taxi Company, Inc.*, 131 NLRB 611, 615 fn. 11 (1961). Additionally, the Board found the following union-security provision, in relevant part, facially valid:

> [a]ll present employees who are not members of the [u]nion and all employees hired hereafter shall become and remain members of the [u]nion as a condition of employment on or after the thirtieth (30) day following the beginning of such employment or the effective date of this Contract or the date of execution of this Contract, whichever is later.

Local No. 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Tech Weld Corporation), 220 NLRB 76, fn. 2 (1975). See also *Roza Watch Corp*., 249 NLRB 284 (1980) (union-security provision required nonmember employees as of the execution of the agreement to become members on the 31st calendar day following the date of execution).

The difference between the facially valid union-security provisions cited above and Article 3 is obvious—those provisions explicitly afford nonmembers the statutorily mandated grace period following the execution date of the agreement to become members in good standing. Unlike those

provisions, however, Article 3, Section 1 of the Agreement does not afford nonmember incumbent employees 31 days before they must become a Union member following the execution of the agreement, nor does it state that nonmember employees must become Union members in good standing following the later of the beginning of their employment or the Agreement's execution date. Instead, the union-security clause in the Agreement requires that nonmember incumbent employees become Union members 31 days following the beginning of their employment, not 31 days following the execution of the contract. For that, the union security provision is unlawful.

The parties also disagree as to the retroactive nature of the Agreement. The Union asserts that the Agreement is not retroactive and makes clear that it became effective on December 22, 2018, and was merely executed at a later date, citing *Four Seasons Solar Products Corporation*, supra. On the other hand, the Employer cites *Standard Molding Corp*., supra, for the proposition that the instant Agreement is retroactive in nature, therefore arguing that grace period in Article 3 expired prior to the contract even being executed. Resolving this dispute is not necessary, as the union-security clause is tied to the execution of the contract, not the effective date. For that reason, whether the Agreement is retroactive is not relevant to this Decision.

For the foregoing reasons, I find that Article 3, Section 1 is incapable of a lawful interpretation. It is clearly unlawful on its face, as it does not afford nonmember incumbent employees the statutorily required 30-day grace period to become Union members. Board law is clear, then, that due to the unlawful nature of Article 3, Section 1, the Agreement cannot serve as a bar to the instant petition.

3. Article 3, Section 2 does not unlawfully require the payment of assessments as a condition of maintaining membership in the Union as argued by the Employer.

While I have determined that Section 1 of Article 3 renders the Agreement incapable of barring the instant petition, I nonetheless will address the Employer's second argument that Section 2 of the same Article equally violates Board law and should also serve to bar the instant petition. The Employer argues that Section 2's mandate that "assessments" be paid by Union members violates legal precedent which permits only "periodic dues and initiation fees" be paid in order to be considered a member in good standing. I do not find merit to the Employer's argument.

It is unlawful for a union-security provision to require, as a condition of achieving membership in good standing, the payment of anything beyond periodic dues and initiation fees. See *Paragon Products Corp.*, supra. Article 3, Section 2, however, does not tie "membership in good standing" to the payment of assessments. A plain reading of the Section supports this finding. As a condition of membership in the Union, Article 3, Section 2 requires that the Employer deduct uniformly required periodic dues and initiation fees. The clause then states that the Employer shall deduct regularly authorized assessments for employees covered by the Agreement who have filed with the Employer a written assignment authorizing such deductions. To be clear, Article 3, Section 2 does not condition Union membership on the payment of assessments or anything beyond periodic dues and initiation fees, and it only allows the Employer to deduct assessments

for those employees that have authorized the same. For those reasons, Article 3, Section 2 is not clearly unlawful on its face, and standing alone would not remove the bar status of the Agreement.

CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction therein.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9(b) of the Act:

> ***Included***: All regular full-time and part-time production employees employed by the Employer at its Selbyville, Delaware Poultry Processing Plant currently located at Hoosier and Railroad Avenue on the Delmarva Peninsula, including but not limited to the following: live hangers, pinners, eviscerating, grading, cut-up, sawing, deboning, and other further processing employees.
>
> ***Excluded***: All other employees, including employees currently represented by Local 355 of the Teamsters Union; temporary employees; and managers, supervisors, and guards as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **United Food and Commercial Workers Union, Local 27 a/w United Food and Commercial Workers International Union, AFL-CIO**.

A. Election Details

The election details will be determined when able to be accommodated by the Regional Office after consultation with the parties. On March 19, 2020, because of the extraordinary

circumstances related to the COVID-19 pandemic, the Board temporarily suspended all Board-conducted elections through April 3, 2020. On April 1, 2020, the Board announced it would not extend that temporary suspension, and would instead resume conducting elections beginning Monday, April 6, 2020. The date, time, place, and manner of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision. If the election is postponed or canceled, I may, in my discretion, reschedule the date, time, place, and manner of election.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the issuance of the Notice of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.[7]

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by a date to be determined by the Regional Director, in light of the extraordinary

[7] The Union argued at hearing that the payroll eligibility date should be the payroll period ending date immediately preceding the filing of this petition. The Union contends generally that employee fluctuation necessitates using the payroll period ending date immediately prior to the petition being filed. Aside from in unusual circumstances, the payroll period ending date to be used in ordering an election is the latest completed payroll period preceding the date of issuance of the Notice of Election. I find that the Union has presented insufficient evidence to show that this is an unusual circumstance that warrants deviating from the Board's standard practice. Thus, the payroll eligibility date to be used herein is the payroll period ending date immediately preceding the issuance of the Notice of Election.

circumstances presented by the COVID-19 pandemic. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election that will be issued subsequent to this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice and the ballots will be published in the following languages: English; Spanish; and Haitian Creole. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Issued at Baltimore, Maryland this 8th day of April 2020.

(SEAL)

/s/ Sean R. Marshall

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